Supreme Court, U.S.
FILED

96 150 MAR 28 1996

OFFICE OF THE CLERK

No.

IN THE

# Supreme Court Of The United States

OCTOBER TERM, 1995

RICHARD A. SCHALL,

*Petitioner,*

v.

UNITED STATES POSTAL SERVICE,

*Respondent.*

Petitioner for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

## PETITION FOR A WRIT OF CERTIORARI

Richard A. Schall
*Pro Se*
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446
(301) 869-2058

May 28, 1996

Balmar Legal Publishing Department Services, Washington, D.C. (202) 682-9800

## QUESTION PRESENTED

1. My question is exactly when did I become a postal service employee without rights? In 1992, RIF actions were directed at my position. Therefore, I am requesting clarification of the applicable RIF procedures at that time. It is my position that the USPS did not act properly in its hurry to restructure.

2. In brief, the key question is what RIF rights did I have in 1992 as a federal civil servant and career postal employee in good standing? MSPB may not have had jurisdiction. However, I contend that I certainly did have RIF rights, particularly dealing with "promotion and placement" procedures. Regretfully, improper promotion and placement procedures were the norm not the exception, thus many careers were negatively impacted including mine.

## I.
## Statement of the Case

This petition seeks review of the judgment of the United States Court of Appeals for the Federal Circuit in it's adverse decision regarding Richard A. Schall, United States Postal Service, career civil service appointee August 17, 1974.

On January 3, 1996, the Federal Appeals court decided (*Schall v. USPS* 94-3644) that United States Postal Service career employees who are not preference eligible "cannot" appeal reduction-in-force (RIF) actions to the Merit Systems Protection Board (MSPB).

## II.
## Importance of the Issues

Postal Service cutback is a RIF and preference eligible Postal Service employees have RIF appeal rights. As stated in my March 21, 1996 letter (Petition for Writ of Certiorari):

The primary issues are: do I as a "Nonpreference Eligible Postal Service Employee" have any "RIF Appeal Rights?" In conjunction with the appeal rights issue, did I have any "other" rights in 1992 as a career postal employee under the FPM Supplement 351-1. These rights included but were not limited to: Assignment Rights, Promotion and Retention Factors, Employee Placement Assistance Programs, and Voluntary Early Retirement.

In summary, my question is exactly when did I become a postal employee without rights? In 1992, RIF actions were directed at my position. Therefore, I am requesting clarification of the applicable RIF procedures at that time. It is my position that the USPS did not act properly in its hurry to restructure. In brief, the key question is what RIF rights did I have in 1992 as a federal civil servant and career postal employee in good standing? MSPB may not have had jurisdiction. However, I contend that I certainly did have RIF rights, particularly dealing

with "promotion and placement" procedures. Regretfully, improper promotion and placement procedures were the norm not the exception, thus many careers were negatively impacted including mine.

## III.
## Conclusion

I am respectfully requesting that all, non-veteran Federal Postal Service (career status) employees be given the same RIF appeal rights and protections as veteran/preference eligible Postal Service Employees including promotion and placement procedures. In brief, there were "transition centers" and almost "three-thousand demotions" of Executive Action Series (EAS) Management personnel, because proper and legitimate RIF procedures were not followed by the USPS.

In summary, the reality is that non-veterans can appeal to federal courts including the "Supreme Court of the United States." However, without a favorable court decision, non-veterans will continue to be treated as second class citizens by the the very government that reaps the benefits of their unique skills, abilities, talents and, most importantly, "loyalty."

Respectfully Submitted,

Richard A. Schall
*Pro Se*
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446
(301) 869-2058

May 28, 1996

**UNITED STATES COURT OF APPEALS**
**FOR THE FEDERAL CIRCUIT**

RICHARD A. SCHALL,

*Petitioner,*

v.

UNITED STATES POSTAL SERVICE,

*Respondent,*

and

MERIT SYSTEMS PROTECTION BOARD,

*Intervenor.*

---

94-3644

---

*Richard A. Schall*, of Gaithersburg, Maryland, submitted Pro Se.

*Thomas P. McLish*, Department of Justice, of Washington, D.C., submitted for respondent. *Frank W. Hunger*, Assistant Attorney General and *David M. Cohen*, Director, Department of Justice, of Washington, D.C., were on the brief for respondent.

*Mary L. Jennings*, Acting General Counsel, *David C. Kane*, Assistant General Counsel and *Calvin M. Morrow*, Attorney, of Washington, D.C., were on the brief for the intervenor, Merit Systems Protection Board.

Appealed from: Merit Systems Protection Board

**UNITED STATES COURT OF APPEALS**
**FOR THE FEDERAL CIRCUIT**

RICHARD A. SCHALL,

*Petitioner,*

v.

UNITED STATES POSTAL SERVICE,

*Respondent,*

and

MERIT SYSTEMS PROTECTION BOARD,

*Intervenor.*

---

94-3644
DECIDED: January 3, 1996

---

Before MAYER, *Circuit Judge,* FRIEDMAN, *Senior Circuit Judge*, and BRYSON, *Circuit Judge*

PER CURIAM.

Richard A. Schall petitions for review of a final decision of the Merit Systems Protection Board which dismissed his appeal for lack of jurisdiction. *Bergon v. United States Postal Serv.*, 64 M.S.P.R. 228 (1994). We affirm.

**Background**

Schall was employed by the United States Postal Service as a Master Instructor, EAS-25, until he was reassigned to the position of Operations Quality Improvement Specialist, EAS-21, during an agency-wide reorganization in 1992 and 1993. On

---

[1] The board stated that Schall made only a bald allegation that he was a preference eligible employee and had thus failed to make a nonfrivolous allegation entitling him to further proceedings on that issue. 64 M.S.P.R. at 231 n.5. He now admits that he is not entitled to preference eligible status.

August 24, 1993, Schall appealed to the board alleging that he was demoted under duress, that the agency violated reduction-in -force (RIF) regulations. and that the agency improperly denied him a promotion. In her acknowledgement order, the administrative judge told Schall that only postal employees eligible for a veteran's preference could appeal RIF actions, and ordered him to file evidence and argument to establish that he was preference eligible. Schall presented no evidence on the issue, and after considering the agency record the administrative judge ruled that he was not a preference eligible employee. *Schall v. United States Postal Serv.*, No. 0351-93-0694-I-1, slip op. at 2 (Oct. 5, 1993) (initial decision). She held that the board had no jurisdiction over an appeal of a RIF action by a nonpreference eligible postal employee or over an appeal of denial of a promotion. *Id.* She dismissed the appeal because it did not raise nonfrivolous issues of fact which could establish the board's jurisdiction. *Id.*

Schall petitioned for review of the finding that he was not a preference eligible employee and the holding that he was not entitled to appeal from the agency's RIF action. The board consolidated his petition with twenty-four similar ones from postal employees who were also affected by the 1992-1993 reorganization. In a final decision styled *Bergon v. United States Postal Service,* 64 M.S.P.R. 228, the board reaffirmed its earlier decision in *Marcoux v. United States Postal Service*, 63 M.S.P.R. 373 (1994), that an agency action taken pursuant to a RIF is necessarily excluded from the definition of adverse actions over which the board has jurisdiction. The board thus held that it "lacked jurisdiction over the appeal of a nonpreference eligible employee who was assigned to a different position as a result of the agency's RIF." 64 M.S.P.R. at 231. Because none of the twenty-five *Bergon* appellants was a preference eligible employee[1] and the agency action which affected each of them was taken pursuant to the RIF, the board dismissed the petitions for lack of jurisdiction. *Id.* at 232. Schall appeals.

## Discussion

### I.

Before addressing the merits, we dispose of the board's intervention to recaption this case. The board argues that it, not the agency, is the proper respondent because *Bergon* addressed only the board's jurisdiction. The Postal Service counters that it is properly the respondent because the board addressed an issue on the merits in reaching the determination that no jurisdiction existed over Schall's claims. We agree with the agency.

The "caption issue" -- whether the board or an agency is the proper respondent to a petition for judicial review of a board decision -- has been the subject of considerable debate, but is now resolved. *See Spruill v. Merit Sys. Protection Bd.*, 978 F.2d 679., 682-84 (Fed. Cir. 1992); *Amin v. Merit Sys. Protection Bd.*, 951 F.2d 1247, 1249-51 (Fed. Cir. 1991). Ensuring that the correct party is the respondent to a petition for review is not just a procedural technicality. Having the proper respondent, and thus the proper caption, "determines which agency and whose lawyers -- and therefore whose policy and practices -- are represented in the appeal." *Spruill*, 978 F.2d at 683. It is now beyond question that "[i]f the issue on appeal is solely one of the procedure or jurisdiction of the MSPB, then the proper respondent is the MSPB. If the issue is solely the merits of the underlying agency action, the agency is the proper respondent. If the case raises a mixture of these issues, i.e., if the merits of the agency action are reached by the MSPB, and at the same time a matter of important MSPB procedure or jurisdiction is involved, *Amin* teaches that the employing agency is the proper respondent." *Id.* at 686. This statement of the law is not seriously disputed, but the parties argue over its application when

---

[2] All citations are to the 1988 edition of the U.S. Code.

an appeal involves facts common to both a jurisdictional determination and the merits. *Cf. id.* at 688.

The board maintains that "[i]n *Bergon*, the Board's jurisdictional dismissal was based solely on its finding that the appellants were affected by reduction-in-force actions but that they were not the type of employee (preference eligible) who had a right to appeal RIF actions to the Board." The board further claims to have nowhere addressed an issue that goes to the merits of a RIF action such as "whether the Postal Service properly established competitive areas or levels or correctly determined the petitioners' RIF retention rights." Therefore it says it acted merely to enforce its limited jurisdiction over only those actions which are specified by law, rule, or regulation, and is the proper respondent to Schall's petition.

The board's argument overlooks that it addressed the most fundamental merits issue: Whether the agency actions against the individual appellants were taken pursuant to a RIF. Although prior to *Bergon*, the board for all intents and purposes had determined that the agency had conducted a RIF in 1992 and 1993, *see e.g., Robinson v. United States Postal Service*, 63 M.S.P.R. 307 (1994); *Brown v. United States Postal Service*, 58 M.S.P.R. 345 (1993), it had not addressed whether the specific actions against Schall and the others were taken pursuant to that RIF. That is important because if the agency actions were actually adverse actions directed at the individual appellants, rather than RIF actions, then some of them may have been able to appeal even though they were not preference eligible postal employees. *See* 39 U.S.C. § 1005(a).[2] If the board correctly

[3] 5 U.S.C. § 7511(a)(1)(B) provides that an "employee" who is entitled to appeal the adverse actions covered by Subchapter II of Chapter 75, *see* 5 U.S.C. § 7512, includes "a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions - . . . (ii) in the United States Postal Service or the Postal Rate Commission." *See generally* 5 U.S.C. §§ 7511-14 (Subchapter II of Chapter 75).

determined that the *Bergon* appellants were affected by agency RIF actions and that none of them were preference eligible postal employees, it follows that it did not have jurisdiction to hear their appeals. When, as here, the board makes a finding on a merits issue en route to an ultimate determination that it is without jurisdiction to hear an appeal, it is the agency whose conduct is at issue and the agency *always* must be allowed to defend its actions as the respondent to a petition for review in this court. In *Bergon*, board addressed a merits issue when it determined that the appellants were affected by a RIF action. Therefore we proceed with the Postal Service as respondent.

All citations are to the 1988 edition of the U.S. Code.

## II.

Having abandoned his claim to preference eligibility, Schall now argues that career postal employees should be allowed to appeal the agency's RIF actions regardless of their status as nonpreference eligible employees. But that is an argument best addressed to Congress.

The Postal Service is "an independent establishment of the executive branch of the Government of the United States," 39 U.S.C. § 201, and its employees are generally not entitled to civil service protection, 5 U.S.C. § 2105(e). Therefore, Schall must point to some law, rule, or regulation that gives him a right to appeal the agency's action or the board has no jurisdiction. *See* 5 U.S.C. § 7701(a); *Van Werry v. Merit Sys. Protection Bd.*, 995 F.2d 1048, 1050 (Fed. Cir. 1993).

---

[4] 39 U.S.C. § 1005(a)(4)(A)(ii) extends the rights of Subchapter II of Chapter 75 of Title 5 "to any other individual who - (I) is in the position of a supervisor or a management employee in the Postal Service. or is an employee of the Postal Service engaged in personnel work in other than a purely nonconfidential clerical capacity; and (II) has completed 1 year of current continuous service in the same or similar positions."

Specific categories of postal employees do have limited rights under Title 5. The Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111, gave preference eligible postal employees the right to appeal adverse actions as provided by Title 5, Subchapter II of Chapter 75.[3] Nine years later, Congress also amended 39 U.S.C. § 1005(a), and gave nonpreference eligible supervisory and managerial employees a limited right to appeal adverse actions. Postal Employee Appeal Rights Act of 1987, Pub. L. No. 100-90, § 1 (a), 101 Stat. 673.[4] Even if shall fits under this statute, whoever, he still has no right to appeal because a RIF action is not an adverse action initiated against a particular employee due to his conduct or performance, but an action directed at the employee's position. "A RIF is an administrative procedure by which agencies eliminate jobs and account for employees who occupied abolished positions." *Huber v. Merit Sys. Protection Bd.*, 793 F.2d 284, 286 (Fed. Cir. 1986). Congress having explicitly excluded RIFs from those adverse actions covered by Subchapter II of Chapter 75, Schall cannot appeal the agency's RIF action as if it were an adverse action. 5 U.S.C. § 7512(B); *see also* 5 C.F.R. § 752.401(b)(3).

**Conclusion**

Accordingly, the decision of the Merit Systems Protection Board is affirmed.

**AFFIRMED**

**UNITED STATES COURT OF APPEALS**
**FOR THE FEDERAL CIRCUIT**

---

94-3644

---

RICHARD A. SCHALL,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent,

and

MERIT SYSTEMS PROTECTION BOARD,

Intervenor.

# Judgement

*ON APPEAL from the* MERIT SYSTEMS PROTECTION BOARD

*in CASE NO(S).* DC0351930694-I-1

This CAUSE having been heard and considered, it is ORDERED and ADJUDGED:

AFFIRMED

ENTERED BY ORDER
OF THE COURT

/s/ Frances X. Gindhart
Francis X. Gindhart, Clerk

DATED Jan - 3 1996
Issued As A Mandate: February 26, 1996

**Mary S. Elcano**
**Senior Vice President, General Counsel**
**United States Postal Service**

***UNITED STATES***
***POSTAL SERVICE***

January 16, 1996

OFFICERS

SUBJECT: Nonpreference eligible postal service Employees Have No RIF Appeal Rights

On January 3, 1996, a federal appeals court decided that Postal Service employees who are not preference eligibles cannot appeal reduction-in-force ("RIF") actions to the Merit Systems Protection Board ("MSPB" or "Board").

Prior to the 1992 restructuring, the petitioner in this case, Richard A. Schall, held an EAS-25 position. As a result of the restructuring, he was assigned to an EAS-21 position, with indefinite saved grade and indefinite saved pay. Mr. Schall filed an appeal with the MSPB and argued that the Board should cancel his new assignment as an improper RIF action. The MSPB dismissed Mr. Schall's appeal because he was not a preference eligible employee. The Board held that the only Postal Service employees who can appeal RIF actions are preference eligibles.

Mr. Schall appealed the MSPB's decision to the United States Court of Appeals for the Federal Circuit in Washington, D.C. The Federal Circuit affirmed the Board's decision, holding that nonpreference eligible Postal Service employees cannot appeal RIF actions to the MSPB. The federal court also held that a petitioner cannot attempt to couch a "RIF action" as an "adverse

action," because an agency takes adverse actions against *employees* to discipline them, but directs RIF actions at *positions*.

This case is significant because it is the first federal court decision upholding our position that the only Postal Service employees who can appeal RIF actions to the MSPB are preference eligibles. A copy of the decision, *Richard A. Schall v. United States Postal Service and Merit Systems Protection Board*, No. 94-3644 (Federal Cir.), is attached for your review.

/s/ Mary S. Elcano

Mary S. Elcano

475 L'Enfant Plaza SW
Washington DC 20260-1100
202-268-2950
Fax. 202-258-4997

October 4,1995

Mr. Francis X. Gindhart, Clerk
United States Court of Appeals
for the Federal Circuit
The National Courts Building
717 Madison Place NW
Washington DC 20439-0001

Re: Schall v. USPS 94-3644
Memorandum for Oral Argument

Dear Sir:

This memorandum is in response to the Notice Of Submission Without Oral Argument dated 9/18/95. I was demoted from EAS-25 to EAS-21 in an adverse action and neither given protection under RIF procedures nor appeal rights to any jurisdiction including the Merit Systems Protection Board, United States Department of Justice, Office of Personnel Management, United States Postal Service nor the Executive Branch of the Federal Govemment. This assignment from the William F. Bolger Management Academy in Potomac, MD to USPS Headquarters in Washington, DC was an involuntary demotion adverse action.

As previously stated in my original brief to the court, it is not prudent of me to recreate information already provided in my individual case. However, after being informed that my level EAS-21 demotion position was being terminated, it became very clear to me that a civil service without rules was fatal. Therefore, after much deliberation, research, and soul searching, I now know that my rights as a career govemment employee of the Executive Branch in good standing had been violated.

My rights as a non-veteran federal and postal employee who is a career civil servant of the Executive Branch should have been protected by the 14th Amendment due process, the Civil Rights Acts, Title 39 which created the USPS, the Postal Employees Appeals and Reform Act of 1987, FPM Supplement 351-1 and the USPS Employee and Labor Relations Manual 365.35.

When the United States Postal Service chooses to remake itself through legislation as a Govemment-Sponsored Enterprise (GSE) much like Fannie Mae (Federal National Mortgage Association) or Freddie Mac (Federal Home Mortgage Corporation) that is fine with me. However, today it is not like either. Thus, right now, the old rules and regulations still must legally apply.

In summary, this adverse action has resulted in negative medical, personal and professional consequences. Also, I strongly believe that other related cases before the Court support my arguments. Therefore, I respectfully request fair and equitable treatment. Also, if deemed appropriate, I will gladly make myself available on November 7, 1995 to the Court in order to answer any specific questions in detail.

Thanking you in advance for your time and expertise.

Sincerely,

Richard A. Schall
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446

(301) 869-2058 Home
(202) 268-5479 Work

cc: Francis X. Gindhart
Thomas P. McLish
Calvin M. Morrow

August 3, 1995

Mr. Francis X. Gindhart, Clerk
United States Court of Appeals
for the Federal Circuit
The National Courts Building
717 Madison Place NW
Washington DC 20439-0001

Re: Schall v USPS 94-3644
Supplemental Brief to US Court of Appeals
for the Federal Circuit

Dear Sir

I was demoted from EAS-25 to EAS-21 in an adverse action and neither given protection under RIF procedures nor appeal rights to any jurisdiction including the Merit Systems Protection Board, United States Department of Justice, Office of Personnel Management, United States Postal Service nor the Executive Branch of the Federal Govemment. This assignment from the William F. Bolger Management Academy in Potomac, MD to USPS Headquarters in Washington, DC was an involuntary demotion adverse action.

As previously stated in my original brief to the court, it is not prudent of me to recreate information already provided in my individual case. However, after much deliberation, research and soul searching, I now know that my rights as a career government employee of the Executive Branch in good standing have been violated. My rights as a non-veteran federal and postal employee should have been protected by the 14th amendment, the Civil Rights Acts, the Postal Employees Appeals and Reform Act of 1987, FPM Supplement 351-1 and the USPS Employee and Labor Relations Manual 365.35.

This adverse action has resulted in negative personal and professional consequences. Other related cases before the Court support my arguments. Therefore, I respectfully request fair and equitable treatment. Also, if deemed appropriate, I will gladly make myself available to the Court in order to answer any specific questions in detail.

REJECTED. Not authorized by any rule.

FOR THE COURT

/s/ Francis X. Gindhart
8/9/95 FRANCIS X. GINDHART
Date Clerk

Thank you in advance for your time and expertise.

Sincerely,

Richard A. Schall
8101 Plum Creek DR
Gaithersburg, MD 20882-4446

(301) 869-2058 Home
(202) 268-5479 Work

July 11, 1995

Mr. Francis X. Gindhart, Clerk
United States Court of Appeals
for the Federal Circuit
The National Courts Building
717 Madison Place NW
Washington DC 204394001

Re: Schall v. USPS 94-3644
Brief to US Court of Appeals for the Federal Circuit

Dear Sir:

It is not necessary for me to restate my case. One fact is clear. I suffered an adverse action. This adverse action resulted in severe negative personal and professional consequences to my family, marriage, health, and career.

My position is that I suffered an adverse action and postal non-preference eligible employees are protected by RIF procedures. I believe that related cases support my position.

I respectfully request that any combination of the following be considered:

- Reverse the decision of the Merit Systems Protection Board.
- Reinstatement to my original EAS-25 level.
- Pay me all related fees and expenses, including but not limited to counseling,medical, postage, research, Xeroxing, time and suffering.
- Retirement with immediate pension without penalty and agreed upon severance pay.

Simple and clean, I want to move on with my life. Accordingly, I am offering fair and equitable options.

If deemed appropriate and necessary, I will respectfully attend a hearing at the Court's convenience in order to clarify any questions the Court might have concerning my case.

Thanking you in advance for your time, expertise, patience, and most importantly...wisdom!

Sincerely,

/s/ Richard A. Schall
Richard A. Schall
8101 Plum Creek DR
Gaithersburg, MD 20882-4446

(301)869-2058 Home
(202) 268-5479 Work

*UNITED STATES*
*POSTAL SERVICE*

CERTIFIED MAIL NO.
Z237640082 RETURN
RECEIPT REQUESTED

April 17, 1995

RICHARD A SCHALL
8101 PLUM CREEK DR
GAITHERSBURG, MD 20882 4446

Dear MR. SCHALL:

The Postal Service is in the process of complying with the decisions of the Merit Systems Protection Board (MSPB) that the 1992-1993 restructuring constituted a reduction-in-force (RIF).

Currently, specific RIF notices are being sent to all preference eligible employees who were placed in lower graded positions at the time of restructuring. As required by the RIF regulations, these notices specify the position and location which would have represented the "best offer" of placement for each of these preference eligible employees.

We have identified your current position as the "best offer" of another employee. If you are displaced by a preference eligible employee, you will be placed into an authorized position for which you are qualified. You will continue to receive your current saved grade and pay protection indefinitely, unless you request a change to a lower grade position or are demoted for cause.

The compliance RIF is being conducted solely for the reasons stated. It does not represent a reflection upon your performance or conduct. You will receive further information within 60 to 90 days. You need take no action at this point, but if you have

any questions concerning this matter, you should contact your District Personnel Office (field employees, including Area Office employees), Corporate Personnel Operations (Headquarters, Headquarters-related field unit employees, and PCES employees occupying PCES positions), or appropriate Human Resources Manager (Inspection Service employees).

Sincerely,

/s/ Joseph G. Hopkins
Joseph G. Hopkins, Manager
MSPB Compliance Group

September 15, 1994

United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439-0001

RE: MSPB Appeal of Richard A. Schall
MSPB Docket Number: DC-0351-93-0694-I-1
Request for Review by the United States Court of Appeals
for the Federal Circuit

To Whom It May Concern:

Please allow this letter to serve as my official request to the United States Court of Appeals for the Federal Circuit to review the Merit Systems Protection Board's (MSPB) decision concerning my appeal.

First, I am not a veteran. I have previously submitted to the MSPB my Appeal Form and most recent Postal Service Personnel Action Form 50, which clearly state that I am not a veteran. Furthermore, I was never appealing as a veteran. I am however appealing as a federal employee of the Executive Branch, employed by the US Postal Service (USPS), with over twenty years of continuous government service between the USPS and the US Navy. Please note, my employment with the US Navy was as a civilian. My retirement plan is the Civil Service Retirement System (CSRS) and my retirement computation date is August 17, 1974.

I am not a veterans preference eligible employee. However, I should have been afforded reduction-in-force protections by the Office of Personnel Management (OPM) when I was demoted as part of a massive USPS Reduction-In-Force (RIF). The facts are clear. I am a federal employee who suffered an adverse action. Specifically, I was demoted from a level EAS-25 Master

Instructor position in the Advanced Management Program to a level EAS-21 Operations Quality Improvement Specialist position and transferred from the Bolger Management Academy to Headquarters. While I was being downgraded and transferred others with less skills, less abilities, less education, less institutional knowledge, fewer years of government service, fewer years of management experience, shorter time in position, lower annual merit performance ratings, and fewer talents . . . were being promoted without the benefits of formal review boards. In addition, my Postal Career Executive Service (PCES) paperwork was trashed and my written agreement for PCES assignment instead of promotion to an EAS-26 was disregarded. Obviously, the above transgressions have played utter havoc with my career aspirations.

My professional judgment tells me something is grossly wrong. Regretfully, I have been unjustly treated by my employer of the last twenty years . . . the federal government. Now, I only request fair and equitable treatment. Accordingly, I am flexible and I would agree a PCES assignment or the Interagency Placement Program (IPP) or to a negotiated severance pay and an immediate pension.

As a professional manager of the federal govemment, I appreciate the time spent in reviewing my appeal. I believe an impartial and professional civil service is essential to a healthy federal govemment including the US Postal Service. Most importantly, federal laws and regulations should not be broken for short term gains, not just because the losses are ultimately substantial, but simply because it is the wrong thing to do.

Thanking you in advance for your expeditious review. It is my understanding that the MSPB will be providing you with my complete files. However, if any fees, material, or data are required on my part, please do not hesitate to contact me immediately.

Richard A. Schall
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446

SSN 142-38-1468

(301) 869-2058 Home
(202) 268-5479 Work

Attachments

cc: Donald D. Anna
Mary S. Elcano
Suzanne J. Henry
Marjorie Marks
Merit Systems Protection Board
Office of the Special Counsel

**SUZANNE J. HENRY VICE PRESIDENT**

***UNITED STATES***
***POSTAL SERVICE***

August 29, 1994

RICHARD A. SCHALL
8101 PLUM CREEK DR
GAITHERSBURG MD 20882-4446

Dear Postal Employee:

As you probably know, the Merit Systems Protection Board has ruled that the placement of a preference-eligible postal employee in a lower-level position during the 1992-1993 restructuring was a "demotion" requiring the application of reduction-in-force procedures even if that employee received saved grade and pay. The Postal Service has begun its efforts to comply with these decisions. I know that regardless of your current employment status you have questions concerning the effects of these decisions on you and your fellow employees.

First, let me say that the Postal Service intends fully and objectively to comply with the decisions of the Merit Systems Protection Board. Please note that all preference eligible veterans assigned to lower-level positions will be accorded the reduction-in-force rights whether or not they have filed an appeal. We are assembling a task force which will plan and administer compliance. Every effort will be made to minimize personal anxiety and business disruption to enable us to devote our full time and attention to serving our customers. The Postmaster General has already decided that no employee will lose salary or grade as a result of compliance with reduction-in-force procedures and no

employee will be laid off, as would normally occur in a reduction-in-force.

Second, you need to know that this compliance effort will be very time consuming given its scope and the complexity of the issues. We all need to be patient and to ignore the inevitable rumors and idle speculation. There are individuals who will claim to have "insider" knowledge on how the reduction-in-force procedures will apply in the unique Postal Service situation. I would suggest that you be skeptical of such claims. The Postal Service has not conducted a reduction-in-force in over twenty years and many things have changed since then including our organizational structure, most of our personnel policies, our job categories and position descriptions, and our personnel data bases.

Third, the issue of veteran's preference eligibility is very important to the Postal Service's compliance effort and it is essential that personnel records on preference eligibility are correct. Attached is a fact sheet which defines "preference eligibility." If you believe that your personnel records do not accurately reflect your veterans' preference eligibility, you may wish to look at your most recent PS Form 50 to ensure that the code shown for your veterans' preference is correct. If you believe that it is incorrect, you must take your DD Form 214 and your most recent PS Form 50 to your local personnel office to verify or correct your records.

We all have a challenging year ahead of us. I am asking all of you to allow the compliance process to proceed and to focus your efforts on keeping this company a world-class Postal Service.

Sincerely,

/s/ Suzanne J. Henry
Suzanne J. Henry

Attachment

475 L'Enfant Plaza SW
WASHINGTON DC 20260-4200
202 268-3783
FAX. 202-268-3074

October 6, 1993

Elizabeth B. Bogle
Administrative Judge
Number Two Skyline Place
Suite 1109
5203 Leesburg Pike
Falls Church, VA 22041-3473

Re: MSPB Appeal of Richard A. Schall
MSPB Docket No. DC-0351-93-0694-I-1

Dear Judge Bogle:

I have received the USPS initial response to my appeal. Also, I have requested a hearing and my action is within the Board's jurisdiction. However, at this time, I wish to settle my appeal. I desire to contact directly Deputy Chief Field Counsel Anna. Please notify me if this action is deemed appropriate to you. Thank you in advance for your patience and guidance in resolving this matter.

Sincerely,

Richard A. Schall
8101 Plum Creek Drive
Gaithersburg, Md 20882-4446
(301) 869-2058 Home
(202) 268-5479 Work

# Reduction In Force

**Office of Personnel Management**
**Federal Personnel Manual System**

**September 1989**

*Federal Times September 19, 1994*

# *RIF Rights South For Non-Vets*

By Ed Winsten
Federal Times Staff Writer

Top US. Postal Service officials will meet with a veterans group claiming downgraded non-veterans were not treated fairly.

The meeting is scheduled for Sept. 16. It follows a Sept. 2 letter from Ronald Drach of the Disabled American Veterans criticizing USPS for not including non-veterans in plans to reconsider downgrades conducted during the reorganization.

"While we have objected to the failure of the USPS to provide veterans the preference in a RIF that they are accorded in law, it has always been our position that *all* [emphasis in original] USPS employees should enjoy the protections accorded federal employees in a RIF," wrote Drach, the group's national employment director.

Earlier this summer, USPS gave up a court fight and told downgraded veterans they would get RIF protections in their attempts to get back their previous jobs. But to this point, USPS has not mentioned whether downgraded non-veterans would be considered. According to USPS, about 7,100 people were downgraded in 1992. The 2,800 preference-eligible veterans have received notices telling them of the decision and advising them to have proof of military service.

But the 4,300 non-preference eligibles have received no correspondence.

Len Gilmer, DAV's assistant employment director, said the organization was wary the postal service would treat non-veterans unfairly. "We don't want a RIF used as a bludgeon and veterans used as a scapegoat," said Gilmer.

In letters to the vets, USPS stressed it will comply with rulings by the Merit Systems Protection Board, which has ruled in more than 100 cases that the reorganization was a RIF. But the board also has repeatedly ruled that non-veterans cannot appeal a downgrade in a RIF.

Non-veterans can appeal to federal court, but without a favorable court decision, they lack clout.

Supreme Court, U.S.
FILED

96 150 MAR 28 1996

No. OFFICE OF THE CLERK

IN THE

# Supreme Court Of The United States

October Term, 1995

RICHARD A. SCHALL,

*Petitioner,*

v.

UNITED STATES POSTAL SERVICE,

*Respondent.*

Petitioner for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

## SUPPLEMENTAL APPENDIX

Richard A. Schall
*Pro Se*
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446
(301) 869-2058

July 29, 1996

Balmar Legal Publishing Department Services, Washington, D.C. (202) 682-9800

20 pp

## TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

*RICHARD A. SCHALL, v. UNITED STATES POSTAL SERVICE*, NO. DC-0351-93-0694-I-1, OCTOBER 5, 1993, MERIT SYSTEMS PROTECTION BOARD ..... 1

REASSIGNMENTS/NUMERIC SUMMARY *DATA*, FOCUS (USPS PUBLICATION) SEPTEMBER 1993 ..... 6

*SOME POSTAL WORKERS CAN APPEAL TO MSPB*, THE FEDERAL TIMES, JULY 12, 1993 ..... 7

AMMA BULLETIN 44-93, OCTOBER 15, 1993 ..... 8

AMMA BULLETIN 49-93, NOVEMBER 18, 1993 ..... 9

AMMA BULLETIN, NOVEMBER 24, 1993 ..... 10

*RUNYON'S REORGANIZATION RUNS AFOUL OF RULES*, FEDERAL TIMES, JANUARY 3, 1994 ..... 11

*HELP FOR RIF'D WORKERS*, FEDERAL TIMES, SEPTEMBER 25, 1995 ..... 13

*POSTAL SERVICE CONSIDERING RUNYON RETIREMENT BONUS*, THE WASHINGTON POST, MONDAY, MAY 6, 1996, A11 ..... 16

*SHORT TAKES*, BUSINESS MAILERS REVIEW, VOLUME 14, NO.3, FEBRUARY 8, 1993 ..... 18

**UNITED STATES OF AMERICA**
**MERIT SYSTEMS PROTECTION BOARD**
**WASHINGTON REGIONAL OFFICE**

DOCKET NUMBER
DC-0351-93-0694-I-1

DATE: October 5, 1993

RICHARD A. SCHALL,

*Appellant,*

v.

UNITED STATES POSTAL SERVICE,

*Agency.*

*Richard A. Schall*, Gaithersburg, Maryland, *pro se.*
*Donald D. Anna*, Esquire, Washington, D.C., *for the agency.*

BEFORE

Elizabeth B. Bogle
Administrative Judge

## INITIAL DECISION

On August 24, 1993, the appellant filed an appeal alleging that the agency improperly denied him a promotion and reduced him in grade in violation of reduction-in-force regulations. The appellant has the burden of proving by preponderant evidence that the Board has jurisdiction over his appeal. *See* 5 C.F.R. § 1201.56(a)(2)(i). For the following reasons, the appeal is DISMISSED.

### Background

The appellant occupied the position of Master Instructor, EAS-25, at the William F. Bolger Management Academy. On August 7, 1993, as part of an agency-wide reorganization, he

was assigned to the position of Operations Quality Improvement Specialist, an EAS-21 position in the agency headquarters.

**Denial of Promotion**

The Board's jurisdiction is limited to those matters specifically conferred on it by statute or regulation. *Cowan v. United States*, 710 F.2d 803, 805 (Fed.Cir.1983). It is well settled that no such grant of jurisdiction exists for appeals from the denial of a promotion. *See Slake v. Department of the Treasury*, 53 M.S.P.R. 207, 210 (1992); *Mello v. Department of Energy*, 20 M.S.P.R. 45 (1984). The agency's alleged failure to promote the appellant to EAS-26 is therefore not a matter that is within the Board's jurisdiction. *See* 5 C.F.R. § 1201.3.

**Reduction in force**

In order to appeal a reduction-in-force action to the Board under 5 C.F.R. § 351.901, an employee of the U.S. Postal Service must be a preference eligible. *See* 39 U.S.C. § 1005(a)(2). The appellant was ordered to file evidence and argument to establish that he was a preference eligible who would be entitled to appeal a reduction-in-force action to the Board. He did not respond to the Board's order.

In order to establish that he is a preference eligible, the appellant would have to file evidence and argument that he met the conditions of 5 U.S.C. § 2108(3). Because the appellant failed to present any evidence on this issue and because the record otherwise establishes that the appellant was not accorded preference eligibility by his employing agency, I conclude that the appellant has not shown or alleged that he is a preference eligible who would be entitled to appeal a reduction in force to the Board. The appellant, I conclude, has not shown that the Board has jurisdiction over his appeal from a reduction-in-force action. *See Brown v. U.S. Postal Service*, MSPB Docket No.

SL07529300541l slip op. at 4 (July 21, 1993); *Raymond v. U.S. Postal Service*, 45 M.S.P.R. 16, 19 (1990).

Because the appellant failed to raise nonfrivolous issues of fact relating to jurisdiction, he is not entitled to a hearing in his case. *See Wilson v. Merit Systems Protection Board*, 807 F.2d 1577, 1583 (Fed.Cir.1986).

## DECISION

The appeal is DISMISSED.

FOR THE BOARD: /s/ Elizabeth B. Bogle
Elizabeth B. Bogle
Administrative Judge

## NOTICE TO APPELLANT

This initial decision will become final on NOV 9 1993, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is the last day on which you can file a petition for review with the Board. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

## BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file your petition with:

The Clerk of the Board
Merit Systems Protection Board
1120 Vermont Avenue, NW., Suite 806
Washington, DC 20419

Your petition must be postmarked or hand-delivered no later than the date this initial decision becomes final. If you fail to provide a statement with your petition that you have either mailed or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

## JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 30 calendar days after the date this initial decision becomes final.

## NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

## CERTIFICATE OF SERVICE

I certify that the attached Document was sent by regular mail this day to each of the following:

**Appellant**

Richard A. Schall
8101 Plum Creek Dr.
Gaithersburg, MD 20882-4446

**Agency's Representative**

Donald D. Anna
U.S. Postal Service
Mid-Atlantic Office
475 LEnfant Plaza, SW., Room 6209
Washington, DC 20260-1131

**Other**

Marjorie Marks
U.S. Office of Personnel Management
Employee Relations Division
1900 "E" Street, NW.
Room 7412
Washington, DC 20415

OCT 5 1993
(date)

/s/ Karen Rollins
Vicki Falk
Legal Assistant

Enclosure to Appellant: Guide for Pro Se Petitioners and Appellants

Source: Focus (USPS Publication)
September 1993

## REASSIGNMENTS/NUMERIC SUMMARY DATA

| | |
|---|---|
| **PROMOTIONS**<br>**58%** | Of all reassignments were to higher level/grade positions.<br>• Veterans/Preference Eligibles<br>10,488 employees<br>• Non-Preference Eligibles<br>17,503 Employees |
| **SAME**<br>**27%** | Of all reassignments were to same level/grade positions.<br>• Veterans/Preference Eligibles<br>4,556 employees<br>• Non-Preference Eligibles<br>8,622 employees |
| **DEMOTIONS**<br>**15%** | Of all reassignments were to lower level/grade positions.<br>• Veterans/Preference Eligibles<br>2,800 employees<br>• Non-Preference Eligibles*<br>4,324 employees |

* I, Richard A. Schall, am not a Veteran and I fall into this category. Legitimate RIF Rules, Regulations, and Procedures were not used.

THE FEDERAL TIMES

July 12, 1993

**Some Postal Workers Can Appeal to MSPB**

Postal service employees not represented by a union can appeal demotions or firings to the Merit Systems Protection Board , an appeals court ruled.

MSPB denied appeals from three U.S. Postal Service employees on the grounds they were not managers, supervisors or confidential employees.

The employees were appealing demotions and firings.

The law is set up so postal employees can appeal to either MSPB or the National Labor Relations Board. Managers and supervisors go to the MSPB.

Unionized employees to the NLRB. The three employees in the case were not unionized.

"MSPB's jurisdictional determination in these cases rest on reasoning that [the law] was somehow intended to permit the emergence of a third group of postal service employees without rights before either body," the appeals court said, ruling against the MSPB.

The law "cannot fairly be construed to permit the amorphous jurisdiction of the MSPB suggested by these cases."

The board failed to consider how the employees' exclusion from a union grievance procedure affected their rights to appeal to MSPB, the court found.

The court sent the three cases back to MSPB.

*Geraldine McCandless et al v. Merit Systems Protection Board, 92-3434, 92-3435, and 92-3426, June 23, 1993, Federal Circuit Court of Appeals.*

**Ken Hughes**

## AMMA BULLETIN 44-93

OCTOBER 15, 1993

**USPS LOOKS FOR ANOTHER CASE TO APPEAL TO MERIT SYSTEMS PROTECTION BOARD**. The Postal Service has announced that it will not appeal a July 1993 Merit Systems Protection Board (MSPB) decision affecting the agency's 1992 corporate reorganization and downsizing. Instead of using *Roberts v. U.S. Postal Service* as its primary vehicle of appeal to the MSPB, postal officials in September said they would look for another MSPB ruling to appeal. In *Roberts* and in other similar decision, the MSPB ruled that he Postal Service's downsizing was in effect a reduction in force (RIF) and, thus, affected postal employees should have been granted appeal rights under existing RIF rules. The Postal Service argues that the reorganization was a RIF.

At the behest of the USPS, the Office of Personnel Management (OPM) on August 19 announced it would appeal the MSPB's July personnel rulings [See *AMMA Bulletin* 38-93]. As the OPM had yet to file its brief with MSPB before the Postal Service changed its mind, the OPM reportedly need act. The next move apparently is for the USPS attorneys to find another case to appeal. If the USPS ultimately loses its appeal, it would open the appeals process to roughly 7,000 postal employees who were demoted in the reorganization.

## AMMA BULLETIN 49-93

NOVEMBER 18, 1993

**APPEAL PENDING ON MERIT SYSTEMS PROTECTION BOARD RULING.** The Office of Personnel Management (OPM) is studying several Merit Systems Protection Board (MSPB) decision calling the Postal Service's 1992 reorganization a reduction in force (RIF) to determine which one to appeal, according to *Federal Times* (November 22, 1993). More than 100 Postal Services cases currently are in the MSPB pipeline. The USPS in September 1993 announced that it would not ask the OPN to appeal the July 1993 Merit Systems Protection Board (MSPB) decision *in Roberts v. USPS.* Instead, the USPS said it would look for another case as its primary vehicle of appeal to the MSPB. In *Roberts*, (and other cases), the MSPB ruled that the USPS' 1992 corporate reorganization was, in effect, a RIF and, thus demoted employees should have been granted appeal rights under federal RIF rules. The USPS disagrees, arguing that positions (not employees) had been cut, and that "reassigned" employees had received saved pay/grade (thus no "demotions"). If the USPS ultimately loses its appeal, the RIF appeals process will be opened to the roughly 7,000 demoted USPS employees. At the USPS' behest, OPM on August 19, 1993, announced it would appeal the *Roberts* rulings. The OPM, which writes the government's personnel regulations, is the federal agency (and not the USPS) which has the authority to challenge the MSPB's decision in this matter.

## AMMA BULLETIN

NOVEMBER 24, 1993

**OPM TO APPEAL TWO USPS REORGANIZTION CASES.** The Office of Personnel Management (OPM) will challenge two of the Merit Systems Protection Board's (MSPB) decisions which deemed the Postal Service's 1992 reorganization a reduction in force (RIF), according to *Federal Times*, (November 29, 1993). The OPM, which writes the government's personnel regulations, is the federal agency (and not the USPS) which has the authority to challenge the MSPB's decisions in this matter. OPM will intervene in decisions made by administrative judges in Dallas and Philadelphia and petition the MSPB to overturn their initial decisions favoring postal employees. OPM Director James King notified the MSPB November 15 and asked for the compete administrative records in two cases. If the OPM cannot get the MSPB to reverse its decisions, the agency can go to federal court to appeal.

More than 100 Postal Service cases currently are in the MSPB pipeline. The USPS in September 1993 announced that it would not ask the OPM to appeal the July 1993 Merit System Protection Board (MSPB) decision in *Roberts v. USPS*. Instead, the USPS said it would look for another case as its primary vehicle of appeal to the MSPB. In *Roberts* (and other cases), the MSPB ruled that the USPS's 1992 corporate reorganization was, in effect, a RIF and, thus, demoted employees should have granted appeal rights under federal RIF rules. The USPS disagrees, arguing that positions (not employees) had been cut, and that "reassigned" employees had received saved pay/grade (thus no "demotions"). If the USPS ultimately loses its appeal, the RIF appeals process will be opened to the roughly 7,000 demoted USPS employees.

*FEDERAL TIMES* *January 3, 1994*

# RUNYON'S REORGANIZATION RUNS AFOUL OF RULES

**By Ed Winsten**
Federal Times Staff Writer

The U.S. Postal Service said it was running a reorganization in 1993, but the Merit Systems Protection Board saw it differently.

In the biggest snag to the reorganization ordered by Postmaster General Marvin Runyon, several administrative judges and the full merit board ruled in favor of more than a dozen employees appealing their transfers to downgraded positions.

It wasn't a reorganization, it was a reduction in force, and employees should have been given RIF protections, the board said.

The board repeatedly found for the employees, even though the postal service gave save grade and pay provisions to everyone who was affected by the reorganization.

The merit board rules it wasn't a reorganization, it was a reduction in force, and employees should have been given RIF protection.

About 7,000 people went to lower grade positions, including several dozen who dropped from career executive to the executive and administrative schedule.

At year's end, the Office of Personnel Management intervened and was studying two cases to appeal to the merit board for a reversal.

Should the merit board deny the appeal, OPM could go to federal court.

In other facets of the reorganization, officials were grappling with a problem late in the year—how to trim the last of the 30,000 jobs identified as overhead and superfluous.

Progress was slow because of the difficulty of finding administrative work that could be trimmed.

According to an internal memo, about 7,500 jobs ticketed for elimination still had not been trimmed.

Officials said there were plenty of vacancies for the people targeted for elimination.

And the transition centers created to find jobs for displaced closed in late November as the final group of employees left the center in Washington, D.C. Other centers around the country closed earlier in the year.

Twice during 1993 employees opinion were aired as the postal service released details of the first worker survey in February and the second in November.

Employees were disheartened by some factors but they remained loyal to the service.

*FEDERAL TIMES* *September 25, 1995*

## HELP FOR RIF'D WORKERS

Hiring Preference Ok'd

**By Leigh Rivenbark**
Federal Times Staff Writer

Agencies must give job preference to qualified employees ousted in a reduction in force.

The administration is requiring agencies to select a "well-qualified surplus or displaced internal agency employee who applies for a vacant position in the commuting area, before selecting any other candidate from either within or outside the agency," said a White House memorandum sent to all agencies Sept. 12.

Where the selection does not include any internal displaced candidates, the agency must select a well qualified employee from another agency over any nonfederal candidate.

"We owe a tremendous debt to federal employees who have devoted their career to public service," President Clinton said in a press release.

The president's memo also says agencies will collaborate with state, local and other federal employers to make career transition services available and will establish policies for retraining displaced employees for other careers in government or the private sector.

The Office of Personnel Management is writing regulations and guidelines to flesh out the requirements. The guidance should be ready by mid-November.

"The underlying principle is that the government is one employer . . .and we value these employees," said Rosalie Cameron, OPM deputy communications director.

"Everybody has invested substantially in training these people," Cameron said. "The premises is, RIFs are through

no fault of the employee. We want to make sure we don't lose their talents."

OPM and agencies have yet to decide several key issues, such as whether preference applies to people who have already left under RIF's; how long after departure the employee might remain eligible for preference, and what defines "well-qualified" or a "commuting area" for preference purposes.

But Cameron said one thing is certain: Employees should not wait to be handed jobs. The requirements that agencies give preference to displaced or surplus workers does not mean agencies must locate jobs for RIF's employees.

"The person has to apply, to show they're interested in the position, and they have to end up in the top group of candidates so they are qualified," Cameron said.

Requiring preference for displaced workers should not hurt manager's ability to fill jobs with the best candidates, said Bruce Moyer, executive director of the Federal Managers Association.

"This is a huge step in the right direction" Moyer said, adding that the Defense Department's similar Priority Placement Program "has worked successfully for 30 years."

Union leaders praised the placement requirements but said there may be few jobs for displaced workers to fill.

"This proposal is a good step but it doesn't solve the problem," said Robert Tobias, president of the National Treasury Employees Union. "Agencies are not going to be in a hiring mode. Agencies are going to have to be very aggressive" about placing workers.

"I think the president is trying to send a positive message to federal employees in light of all the news about lockouts," said John Sturdivant, president of the American Federation of Government Employees.

"I'm not really sure there will be other [job] opportunities considering the budget and given the fact that all agencies are shrinking."

**The Washington Post** Monday, May 6, 1996 **A11**

# POSTAL SERVICE CONSIDERING RUNYON RETIREMENT BONUS

## Benefits Would Top $1.5 Million, Newsletter Says

**By Bill McAllister**
Washington Post Staff Writer

The Postal Service is considering a plan that would give Postmaster General Marvin T. Runyon benefits valued at "more than $1.5 million" after he leaves office, according to a mail industry newsletter and postal sources.

Business Mailers Review reports that the Postal Service's Board of Governors is to consider the retirement proposal today in a closed session. The newsletter said the plan may violate federal law, which limits Runyon's compensation to $148,400 a year, the same level as that for Cabinet officers.

Frank Brennan, a postal spokesman, confirmed that the governors have been discussing the issue of post retirement benefits, but said "no decision have been made." He could not offer any details of what the governors, a panel of nine presidential appointees who oversee the agency, are discussing.

Runyon, 71, has given no indication that he is ready to leave, and Brennan said Runyon is "looking forward to the challenges of making the Postal Service competitive."

Runyon, told the governors earlier this year the he will remain in office longer than four years, the minimum time he specified when he became the nation's 70th postmaster general in the summer of 1992. He has not said how long he will remain, but has spoken of wanting yet another career after he leaves the Postal Service.

While Runyon has never complained publicly about his pay, a postal source, who asked not to be named, said the postmaster general has been pushing hard for a retirement package. The source said the newsletter's account was accu-

rate, but added that the proposal could be "a public relations disaster" for the agency and probably would not win approval.

Runyon has told Congress repeatedly that he does not believe the federal agency pays its top executives enough. He has urged higher pay and bigger bonuses to the agency's top managers.

Salary was not an issue when Runyon, a former automobile executive, was hired. He has said his government job is a way to repay the nation for his success, first with Ford Motor Co. and later with Nissan, the Japanese auto maker whose U.S. plant he built and managed.

The postal newsletter said in today's edition that Runyon is expected to argue that the plan does not violate the compensation ceiling because he would receive the additional money after he leaves office. It says postal managers have hired the accounting firm of Coopers & Lybrand and "one of Washington's best connected law firms" to make the argument for the payment.

It says the financial package would included an $800,000 life insurance policy and payments of nearly $600,000, plus "a hefty bonus" if Runyon remains on the job a year or two beyond July 1.

The newsletter said Runyon has been accused of violating federal salary limits once before by boosting the pay of senior executives at the Tennessee Valley Authority, a federal agency he headed before he assumed his current job. It also said he "flouted" the salary cap by giving a $50,000 relocation bonus to Joseph R. Caraveo when he became the Postal Service's chief operating officer.

The newsletter, which has criticized Runyon in the past, labeled arguments for the bonus package as "phony". It quoted an unnamed lawyer familiar with the government's salary cap as saying that the value of the bonuses would have to be calculated at the time when the contract is signed, not when Runyon receives the money.

**BUSINESS MAILERS REVIEW**

Monitoring Postal Service, Private Carriers, and Suppliers
Van H. Seagraves, Publisher

*Volume 14, No.3* *February 8, 1993*

**Short Takes**

PMG Runyon should run a mushroom farm. He is happiest when employees and critics are in the dark. At a Congressional hearing Runyon was asked why he misinformed surplused workers about their rights to appeal demotions. The Prince of Darkness had the audacity to reply: "Because we will have fewer suits." The mushroom treatment has also been applied to the Service's key financial documents. Not one *Financial and Operating Statement* has been published since last September. For more than 20 years they have recorded postal performance by each of the 13 accounting periods in a year. The publication may be discontinued, we've learned. The Postal Rate Commission and the parties that participate in rate cases are troubled by this "black-out." Recently the PRC asked the Service the status of six different reports that are overdue. PRC rules require the "timely filling" of information that details how well the Service is performing, cost trends within classes of mail, and rough estimates of future rate increases.